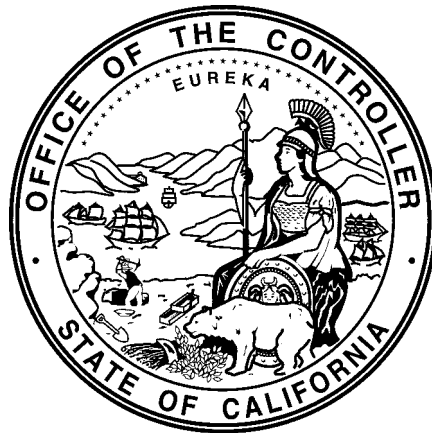


STATE OF CALIFORNIA

**Estate Tax and Generation-Skipping
Transfer Tax Laws
and
Estate Tax Regulations**



KATHLEEN CONNELL
California State Controller

October 2002

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KATHLEEN CONNELL
Controller of the State of California

**To the Tax Professionals, Attorneys at Law,
and Citizens of the State of California:**

I am pleased to provide an updated edition of *Estate Tax and Generation-Skipping Transfer Tax Laws and Estate Tax Regulations*. This publication is a compilation of the California estate tax and generation-skipping transfer tax laws, pursuant to the Revenue and Taxation Code and related estate tax regulations, contained in Title 2 of the California Administrative Code, that have been adopted by the State Controller's Office.

The publication has been updated to include the following recent legislative changes to the California Estate Tax Law:

- Revenue and Taxation Code Sections 13304, 13402, 13404, 13405, 13550, 13563, 16760, and 16870 have been amended to clarify the phraseology of these sections.
- Revenue and Taxation Code Sections 13551 and 16871 have been repealed. These sections discussed the application of payments on estate tax and interest for overpayments of the generation-skipping transfer tax.
- Section 1139 was added to the Administrative Code of Regulations defining how confidential information shall be treated by the Controller's Office.

Pursuant to recent changes made in the federal law, H.R. 1836, the collection of estate tax revenue will be phased out over four years starting in January 2002. The new federal law reduces the state death tax credit by 25% annually beginning in the calendar year 2002. The state death tax credit will be eliminated effective January 1, 2005. The federal portion of the estate tax will phase out over a 10-year period.

This document, along with other State Controller's Office publications, is also available on our Web site (<http://www.sco.ca.gov>).

Please send any comments or questions to the State Controller's Office, Division of Collections, Bureau of Tax Administration, P. O. Box 942850, Sacramento, California 94250, or call the bureau at (916) 445-6321.

Sincerely,

KATHLEEN CONNELL
State Controller

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Estate Tax and Generation-Skipping Transfer Tax Laws

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(California Code of Regulations. Title 2)

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PART 8

PROHIBITION OF GIFT AND DEATH TAXES

Chapter

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10. Disposition of Proceeds. §§14301-14302

Part 8 was added by Initiative Measure June 8, 1982; Stats. 1982, c. 1535, p. 5974, §15.

Former Part 8, Inheritance Tax, added by Stats. 1943, c.658, §1, was repealed by Initiative Measure June 8, 1982; Stats. 1982, c. 1535, p. 5974, §14.

Chapter 1

Imposition of Tax

Section

- | | |
|--------|---|
| 13301. | Prohibition of tax |
| 13302. | State estate tax; imposition; amount |
| 13303. | Collection and administration |
| 13303. | Estate having property in this state, and other states; computation of state death tax credit attributable to California property |
| 13304. | State death tax credit allowable against federal estate tax; property with situs in California; determination |

Chapter 1, Imposition of Tax, was added by Stats. 1982, c. 1535, p. 5974, §15.

Heading of Chapter 1, Imposition of Tax, was also added by Stats. 1982, c. 327, p. 1490, §168, eff. June 30, 1982.

§13301. Prohibition of Tax

Neither the state nor any political subdivision of the state shall impose any gift, inheritance, succession, legacy, income, or estate tax, or any other tax, on gifts or on the estate or inheritance of any person or on or by reason of any transfer occurring by reason of a death.

§13302. State Estate Tax; Imposition; Amount

Notwithstanding the provisions of Section 13301, whenever a federal estate tax is payable to the United States, there is hereby imposed a California estate tax equal to the portion, if any, of the maximum allowable amount of the credit for state death taxes, allowable under the applicable federal estate tax law, which is attributable to property located in the State of California. However, in no event shall the estate tax hereby imposed result in a total death tax liability to the State of California and the United States in excess of the death tax liability to the United States which would result if this section were not in effect.

§13303. Collection and Administration

The Legislature shall provide for the collection and administration of the tax imposed by Section 13302.

Note. For another section of the same number, added by Stats. 1982, c. 1535, p. 5975, §15, see §13303, post.

§13303. Estate Having Property in This State, and Other States; Computation of State Death Tax Credit Attributable to California Property

In a case where a decedent leaves property having a situs in this state, and leaves other property having a situs in another state, or other states, the portion of the maximum state death tax credit allowable against the federal estate tax on the total estate by the federal estate tax law which is attributable to the property having a situs in California shall be determined in the following manner:

(a) For the purpose of apportioning the maximum state death tax credit, the gross value of the property shall be that value finally determined for federal estate tax purposes.

(b) The maximum state death tax credit allowable shall be multiplied by the percentage which the gross value of property having a situs in California bears to the gross value of the entire estate subject to federal estate tax.

(c) The product determined pursuant to subdivision (b) shall be the portion of the maximum state death tax credit allowable which is attributable to property having a situs in California.

Note. For another section of the same number, added by Initiative Measure June 8, 1982, see §13303, ante.

§13304. State Death Tax Credit Allowable Against Federal Estate Tax; Property with Situs in California; Determination

In a case where the gross estate of a decedent includes property having a situs in this state, and includes other property having a situs in another state, or other states, the portion of the maximum state death tax credit allowable against the federal estate tax on the total estate by the federal estate tax law that is attributable to the property having a situs in California shall be determined in the following manner:

(a) For the purpose of apportioning the maximum state death tax credit, the gross value of the property shall be that value finally determined for federal estate tax purposes.

(b) The maximum state death tax credit allowable shall be multiplied by the percentage which the gross value of property having a situs in California bears to the gross value of the entire estate subject to federal estate tax.

(c) The product determined pursuant to subdivision (b) shall be the portion of the maximum state death tax credit allowable that is attributable to property having a situs in California.

Added by Stats. 1982, c. 327, p. 1490, §169, eff. June 30, 1982. Amended by Stats. 2000, c. 363, p. 2, §2, eff. September 7, 2000.

Chapter 2 Definitions

Section

- 13401. Definitions to govern construction
- 13402. Estate or property
- 13403. Personal representative
- 13404. Transfer
- 13405. Decedent or transferor
- 13406. Transferee
- 13407. Resident or resident decedent
- 13408. Nonresident or nonresident decedent
- 13409. Gross estate
- 13410. Taxable estate
- 13411. Federal credit

Chapter 2 was added by Stats. 1982, c. 327, p. 1490, §170, eff. June 30, 1982; Stats. 1982, c. 1535, p. 5975, §15.

§13401. Definitions to Govern Construction

Except where the context otherwise requires, the definitions given in this chapter govern construction of this part.

§13402. Estate or Property

"Estate" or "property" means the real or personal property or interest therein included in the gross estate of a decedent or transferor, and includes all of the following:

(a) All intangible personal property included in the gross estate of a resident decedent within or without the state or subject to the jurisdiction thereof.

(b) All intangible personal property in California included in the gross estate of a nonresident decedent of the United States, including all stock of a corporation organized under the laws of California or which has its principal place of business or does the major part of its business in California or of a federal corporation or national bank which has its principal place of business or does the major part of its business in California, excluding, however, savings accounts in savings and loan associations operating under the authority of the Division of Savings and Loan or the Federal Home Loan Bank board and bank deposits, unless those deposits are held and used in connection with a business conducted or operated, in whole or in part, in California.

Amended by Stats. 2000, c. 363, p. 2, §3, eff. September 7, 2000.

§13403. Personal Representative

"Personal representative" means the personal representative of the decedent or, if there is no personal representative appointed, qualified and acting within this state, any person who is in actual or constructive possession of any property included in the gross estate of the decedent.

§13404. Transfer

"Transfer" means the inclusion of any property or other interest included in the gross estate of a decedent.

Amended by Stats. 2000, c. 363, p. 2, §4, eff. September 7, 2000.

§13405. Decedent or Transferor

"Decedent" or "transferor" means any person whose death gives rise to a transfer.

Amended by Stats. 2000, c. 363, p. 3, §5, eff. September 7, 2000.

§13406. Transferee

"Transferee" means any person to whom a transfer is made, and includes any legatee, devisee, heir, next of kin, grantee, donee, vendee, assignee, successor, survivor, or beneficiary.

§13407. Resident or Resident Decedent

"Resident" or "resident decedent" means a decedent who was domiciled in California at his or her death.

§13408. Nonresident or Nonresident Decedent

"Nonresident" or "nonresident decedent" means a decedent who was domiciled outside of California at his or her death.

§13409. Gross Estate

"Gross estate" means "gross estate" as defined in Section 2031 of the United States Internal Revenue Code of 1954, as amended or renumbered.

§13410. Taxable Estate

"Taxable estate" means the "taxable estate" as defined in Section 2051 of the United States Internal Revenue Code of 1954, as amended or renumbered.

§13411. Federal Credit

"Federal credit" means the maximum amount of the credit for state death taxes allowed by Section 2011 of the United States Internal Revenue Code of 1954, as amended or renumbered in respect to a decedent's taxable estate.

Chapter 3 Returns

Article

1. Estate Tax Return. §§13501-13504
2. Penalties. §13510

Chapter 3 was added by Stats. 1982, c. 327, p. 1491, §171, eff. June 30, 1982; Stats. 1982, c. 1535, p. 5976, §15.

Article 1 Estate Tax Return

Section

13501. Filing returns and copies; state tax and federal estate tax
13502. Extension of time for filing
13503. Amended returns; payment of additional tax
13504. Notice; final determination of federal estate tax due; payment of additional tax and interest

§13501. Filing Returns and Copies; State Tax and Federal Estate Tax

The personal representative of every estate subject to the tax imposed by this part who is required to file a federal estate tax return shall file with the Controller on or before the federal estate tax return is required to be filed both of the following:

- (a) A return for the tax due under this part.
- (b) A true copy of the federal estate tax return.

§13502. Extension of Time for Filing

If the personal representative has obtained an extension of time for filing the federal estate tax return, the filing required by Section 13501 shall be similarly extended until the end of the time period granted in the extension of time for the federal estate tax return. A true copy of the federal extension shall be filed with the Controller.

§13503. Amended Returns; Payment of Additional Tax

If the personal representative files an amended federal estate tax return, he or she shall immediately file with the Controller an amended return with a true copy of the amended federal estate tax return. If the personal representative is required to pay an additional tax under this part pursuant to the amended return, he or she shall pay that additional tax, together with any interest as provided in Section 13550 at the same time the amended return is filed.

§13504. Notice; Final Determination of Federal Estate Tax Due; Payment of Additional Tax and Interest

Upon final determination of the federal estate tax due, the personal representative shall, within 60 days after that determination, give written notice of it to the Controller. If any additional tax is due under this part by reason of this determination, the personal representative shall pay the same, together with interest as provided in Section 13550, at the same time he or she files the notice.

Article 2 Penalties

Section

13510. Failure to timely file; penalty; amount; waiver

§13510. Failure to Timely File; Penalty; Amount; Waiver

If the return provided for in Section 13501 is not filed within the time period specified therein or the extension specified in Section 13502, then the personal representative shall pay, in addition to the interest provided in Section 13550, a penalty equal to 5 percent of the tax due pursuant to this part, as finally determined, for each month, or portion thereof, during which that failure to file continues, not exceeding 25 percent in the aggregate, unless it is shown that such failure is due to reasonable cause. If a similar penalty for failure to timely file the federal estate tax return is waived, that waiver shall be deemed to constitute reasonable cause for purposes of this section.

Chapter 4

Deficiency Determination

Section

- 13516. Determination of deficiency; time
- 13517. False, fraudulent or unfiled returns
- 13518. Erroneous determination; set aside; issuance of amended determination
- 13519. Notice of deficiency
- 13520. Erroneous determination; action to modify

Chapter 4 was added by Stats. 1982, c. 327, p. 1492, §172, eff. June 30, 1982; Stats. 1982, c. 1535, p. 5977, §15.

§13516. Determination of Deficiency; Time

In a case not involving a false or fraudulent return or failure to file a return, if the Controller determines at any time after the tax is due, but not later than four years after the return is filed, that the tax disclosed in any return required to be filed by this part is less than the tax disclosed by his or her examination, a deficiency shall be determined. That determination may also be made within such time after the expiration of that four-year period as may be agreed upon in writing between the Controller and the personal representative.

For purposes of this section, a return filed before the last day prescribed by law for filing that return shall be considered as filed on that last day.

§13517. False, Fraudulent or Unfiled Returns

In the case of a false or fraudulent return or failure to file a return, the Controller may determine the tax at any time.

§13518. Erroneous Determination; Set Aside; Issuance of Amended Determination

In any case in which a deficiency has been determined in an erroneous amount, the Controller may, within three years after the erroneous determination was made, set aside the determination or issue an amended determination in the correct amount.

§13519. Notice of Deficiency

The Controller shall give notice of the deficiency determined, together with any penalty for failure to file a return, by personal service or by mail to the person filing the return at the address stated in the return, or, if no return is filed, to the person liable for the tax. Copies of the notice of deficiency may in like manner be given to such other persons as the Controller deems advisable.

§13520. Erroneous Determination; Action to Modify

In any case in which it is claimed that a deficiency has been determined in an erroneous amount, any person who is liable for the tax may, within three years after the determination was made, bring an action against the state in the superior court having jurisdiction to have the tax modified in whole or in part.

Chapter 5

Payment of Tax

Article

1. Generally. §§13530-13534
2. Interest. §§13550-13551
3. Delinquent Tax Bond. §§13555-13557

Chapter 5 was added by Stats. 1982, c. 327, p. 1493, §173, eff. June 30, 1982; Stats. 1982, c. 1535, p. 5978, §15.

Article 1

Generally

Section

13530. Payment by personal representative; duration of liability
13531. Due date
13532. Delinquency date
13533. Payee; remittance
13534. Applicability of section 6166 of the Internal Revenue Code

§13530. Payment by Personal Representative; Duration of Liability

The tax imposed by this part shall be paid by the personal representative to the extent of assets subject to his or her control. Liability for payment of the tax continues until the tax is paid.

§13531. Due Date

The tax imposed by this part is due and payable at the date of the decedent's death.

§13532. Delinquency Date

The tax imposed by this part is delinquent at the expiration of nine months from the date on which it becomes due and payable, if not paid within that time.

§13533. Payee; Remittance

The tax imposed by this part shall be paid to the Controller by remittance to the Treasurer.

§13534. Applicability of Section 6166 of the Internal Revenue Code

In the case of any decedent dying on or after January 1, 1999, Section 6166 of the Internal Revenue Code, enacted as of January 1, 1998, shall apply to any tax due, and the interest rate on amounts due, as provided in Section 6601(j) of the Internal Revenue Code, enacted as of January 1, 1998, shall apply in lieu of the rate provided in Section 13550.

Added by Stats. 1998, c. 323, p. 14, §8, eff. August 20, 1998.

Article 2 Interest

Section

- 13550. Imposition; rate
- 13551. Application of payments

§13550. Imposition; Rate

(a) The tax imposed by this part does not bear interest if it is paid prior to the date on which it otherwise becomes delinquent. However, if that tax is paid after that date, that tax bears interest at the rate for underpayment of estate tax provided in Section 6621(a)(2) of the Internal Revenue Code from the date it became delinquent and until it is paid. Interest under this section shall be compounded daily.

(b) The amendments made by Chapter 323 of the Statutes of 1998 shall apply to delinquent amounts unpaid on or after January 1, 1999, to December 31, 2000, inclusive.

Amended by Stats. 1998, c. 323, p. 15, §9, eff. August 20, 1998. Amended by Stats. 2000, c. 363, p. 3, §6, eff. January 1, 2001.

§13551. Application of Payments

Section 13551 of the Revenue and Taxation Code was repealed by Stats. 2000, c. 363, p. 3, §6.5, eff. January 1, 2001.

Article 3 Delinquent Tax Bond

Section

- 13555. Delinquent tax; personal representative's bond; amount
- 13556. Filing bond and copy
- 13557. Failure to file bond; revocation of letters of personal representative

§13555. Delinquent Tax; Personal Representative's Bond; Amount

If any personal representative fails to pay any tax imposed by this part for which he or she is liable prior to the delinquent date of the tax, he or she shall, on motion of the Controller, in his or her discretion, be required by the superior court having jurisdiction to execute a bond to the people of the State of California in a penalty of twice the amount of the tax with those sureties as the court may approve, conditioned for the payment of the tax, plus interest on the tax at the rate of 12 percent per annum commencing on the date that tax became delinquent, within a certain time to be fixed by the court and specified in the bond.

§13556. Filing Bond and Copy

The bond shall be filed in the office of the clerk of the court, and a certified copy shall be immediately transmitted to the Controller.

§13557. Failure to File Bond; Revocation of Letters of Personal Representative

If the bond is not filed within 20 days after the date of the filing of the order requiring it, the letters of the personal representative affected shall be revoked upon motion of the Controller.

Chapter 6

Refunds

Section

13560. Entitlement to refund

13561. Application; time

13562. Warrant

13563. Interest; rate; time of accrual

Chapter 6 was added by Stats. 1982, c. 327, p. 1494, §174, eff. June 30, 1982; Stats. 1982, c. 1535, p. 5979, §15.

§13560. Entitlement to Refund

Whenever the Controller determines that the tax due under this part has been over paid, the person making payment shall be entitled to a refund of the amount erroneously paid on presentation of proof satisfactory to the Controller that he or she is entitled to a refund.

§13561. Application; Time

An application for the refund shall be made to the Controller within one year after the date the federal estate tax has been finally determined.

§13562. Warrant

On proof satisfactory that the applicant is entitled to a refund, the Controller shall draw his or her warrant upon the Treasurer in favor of the person who paid the tax in the amount erroneously paid, and the Treasurer shall refund that amount.

§13563. Interest; Rate; Time of Accrual

- (a) For purposes of determining interest on overpayments for periods beginning before July 1, 2002, interest shall be allowed and paid upon any overpayment of the tax due under this part in the same manner as provided in Sections 6621(a)(1) and 6622 of the Internal Revenue Code.
- (b) For purposes of determining interest on overpayments for periods beginning on or after July 1, 2002, interest shall be allowed and paid upon any overpayment of tax due under this part at the lesser of the following:
 1. Five percent.
 2. The bond equivalent rate of 13-week United States Treasury bills, determined as follows:
 - A. The bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of January shall be utilized for determining the appropriate rate for the following July 1 to December 31, inclusive.
 - B. The Bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of July shall be utilized for determining the appropriate rate for the following January 1 to June 30, inclusive.
- (c) For purposes of subdivision (b), in computing the amount of any interest required to be paid by the state, that interest shall be computed as simple interest, not compound interest.

Amended by Stats. 2000, c. 363, p. 3, §7, eff. January 1, 2001. Amended by Stats. 2002, c. 1124, p. 66, § 52, eff. July 1, 2002.

Chapter 7 Collection of Tax

Article

1. Suit for Tax. §13601
 2. Lien of Tax. §13610
 3. Warrant for Collection of Tax. §§13615-13617
 4. Writ of Execution. §§13620-13622
 5. Miscellaneous. §§13680-13684
 6. Tax Compromise. §§13801-13810.4
 7. Uniform Act on Interstate Arbitration of Death Taxes. §§13820-13820.13
 8. Determination of Domicile by Arbitration: Alternative Method. §§13830-13830.13
- Chapter 7 was added by Stats. 1982, c. 327, p. 1494, §175, eff. June 30, 1982; Stats. 1982, c. 1535, p. 5979, §15.*

Article 1 Suit for Tax

Section

13601. Action by state

§13601. Action by State

The state may enforce its claim for any tax imposed by this part and enforce the lien of the tax by a civil action in any court of competent jurisdiction against any person liable for the tax or against any property subject to the lien.

Article 2 Lien of Tax

Section

13610. State tax lien; law governing; extinguishment; duration; conditions

§13610. State Tax Lien; Law Governing; Extinguishment; Duration; Conditions

(a) If any personal representative fails to pay any tax, interest, or penalty imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. Except as otherwise provided in subdivision (b), the lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) Notwithstanding subdivision (a) of Section 7172 of the Government Code, all of the following apply to a state tax lien created pursuant to subdivision (a):

(1) If the lien is not extinguished as in paragraph (2), (3), or (4), or otherwise released or discharged, it expires 10 years from the time a deficiency determination is issued pursuant to this part if, within that 10 years, no notice of the lien has been recorded or filed as provided in Section 7171 of the Government Code.

(2) If suit or a proceeding for collection of the tax has not been instituted within 5 years after the tax becomes due and payable, the lien ceases as to any bona fide purchaser, mortgagee, or lessee of, or

beneficiary under a deed of trust on, the property subject to the lien.

(3) If property subject to the lien is sold, exchanged, or otherwise transferred pursuant to the Probate Code the lien ceases as to the property and attaches to the proceeds or other consideration received.

(4) If property subject to the lien is mortgaged, hypothecated or leased pursuant to the Probate Code, the lien becomes subject to and subordinate to the rights and interests of the mortgagee, lessee, or other person so secured or created, and attaches to the proceeds of the mortgage, hypothecation, or lease. *Added by Stats. 1982, c. 327, p. 1495, §175, eff. June 30, 1982; Stats. 1982, c. 1535, p. 5979, §15. Amended by Stats. 1983, c. 645, §2.*

Article 3

Warrant for Collection of Tax

Section

- 13615. Warrant; enforcement of lien and collection of tax
- 13616. Fees, commissions and expenses; payment
- 13617. Liability for fees, commissions and expenses; collection

§13615. Warrant; Enforcement of Lien and Collection of Tax

At any time within 10 years after any person is delinquent in the payment of any amount herein required to be paid, or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the Controller or his or her authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and sale pursuant to a writ of execution.

Added by Stats. 1982, c. 327, p. 1495, §175, eff. June 30, 1982; Stats. 1982, c. 1535, p. 5980, §15.

§13616. Fees, Commissions and Expenses; Payment

The Controller may pay or advance to the sheriff or marshal, the same fees, commissions, and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution. The Controller, and not the court, shall approve the fees for publication in a newspaper.

§13617. Liability for Fees, Commissions and Expenses; Collection

The fees, commissions, and expenses are obligations of the person required to pay any amount under this part and may be collected from him or her by virtue of the warrant or in any manner provided in this part for the collection of the tax.

Article 4

Writ of Execution

Section

- 13620. Issuance
- 13621. Property subject to writ
- 13622. Fee

§13620. Issuance

At any time after a tax imposed by this part is delinquent, the Controller may have a writ of execution issued for the enforcement of any judgment rendered pursuant to this part in respect to the tax.

§13621. Property Subject to Writ

The writ shall be executed against any property of the person liable for payment of the tax, or against any property subject to the lien of the tax.

§13622. Fee

No fee shall be exacted from the Controller for the issuance of execution of the writ.

Article 5

Miscellaneous

Section

- 13680. Commencement of collection proceedings; time limitations
- 13681. Certificate of amount due; evidentiary effect
- 13682. Prevention or injunction of collection prohibited
- 13683. Actions in other states; comity; certificate of authority of officials; evidentiary effect
- 13684. Cumulative effect of remedies

§13680. Commencement of Collection Proceedings; Time Limitations

Proceedings for the collection of any tax imposed by this part may be commenced at any time after the tax is due and within 10 years from and after the time a delinquency determination is issued pursuant to the provisions of this part.

§13681. Certificate of Amount Due; Evidentiary Effect

In any proceeding for the enforcement of the estate tax a certificate by the Controller showing the amount due is prima facie evidence of the imposition of the tax, of the fact that it is due, and of compliance by the Controller with all the provisions of this part in relation to the computation and determination of the tax.

§13682. Prevention or Injunction of Collection Prohibited

No injunction, writ of mandate, or other legal or equitable process shall ever issue in any suit, action, or proceeding in any court against this state or any officer of this state to prevent or enjoin the collection of any tax imposed by this part.

§13683. Actions in Other States; Comity; Certificate of Authority of Officials; Evidentiary Effect

The Controller may bring suits in the courts of other states to collect estate taxes payable under this part. An official of another state which extends a like comity to this state may sue for the collection of similar taxes in the courts of this state. A certificate by the secretary of state of another state, under the great seal of that state, that an official thereof has authority to collect its estate or other transfer taxes is conclusive evidence of the authority of that official in any suit for the collection of those taxes in any court of this state.

§13684. Cumulative Effect of Remedies

The remedies of the state for the enforcement of the tax imposed by this part are cumulative, and no action taken by the Controller or any other state official constitutes an election by the state or any of its officers to pursue any remedy to the exclusion of any other remedy for which provision is made by this part.

Article 6

Tax Compromise

Section

- 13801. Compromise with personal representative of claimed nonresident decedent
- 13810. Dispute as to decedent's domicile; agreement as to amount of taxes; parties; filing;
 interest
- 13810.1. "State"
- 13810.2. Construction to effect uniformity
- 13810.3. Short title
- 13810.4. Applicability of article

§13801. Compromise with Personal Representative of Claimed Nonresident Decedent

The Controller may compromise with the personal representative the tax, including interest and penalty thereon, payable on the estate of any decedent who it is claimed was not a resident of this state at the time of his or her death.

§13810. Dispute as to Decedent's Domicile; Agreement as to Amount of Taxes; Parties; Filing; Interest

When the Controller claims that a decedent was domiciled in this state at the time of his or her death and the taxing authorities of another state or states make a like claim on behalf of their state or states, the Controller may make a written agreement of compromise with the other taxing authorities and the executor or administrator that a certain sum shall be accepted in full satisfaction of any and all death taxes imposed by this state, including any interest to the date of filing the agreement. The agreement shall also fix the amount to be accepted by the other states in full satisfaction of death taxes. The executor or administrator is hereby authorized to make that agreement. Either the Controller or the executor or administrator shall file the agreement, or a duplicate, with the authority that would be empowered to determine death taxes for this state if there had been no agreement; and thereupon the tax shall be deemed conclusively fixed as therein provided. Unless the tax is paid within 90 days after filing the agreement, interest shall thereafter accrue upon the amount fixed in the agreement but the time between the decedent's death and the filing shall not be included in computing the interest.

§13810.1. "State"

As used in this article, "state" means any state, territory, or possession of the United States, and the District of Columbia.

§13810.2. Construction to Effect Uniformity

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§13810.3. Short Title

This article may be cited as the "Uniform Act on Interstate Compromise of Death Taxes."

§13810.4. Applicability of Article

This article shall apply to estates of decedents dying before or after its enactment.

Article 7

Uniform Act on Interstate Arbitration of Death Taxes

Section

- 13820. Dispute as to decedent's domicile; agreement to arbitrate; board of arbitrators
- 13820.1. Hearings
- 13820.2. Powers of board; enforcement of subpoenas
- 13820.3. Determination; finality
- 13820.4. Majority vote
- 13820.5. Determination; filing
- 13820.6. Interest; maximum rate
- 13820.7. Written compromise
- 13820.8. Compensation and expenses; determination; administration expense
- 13820.9. Applicability of article; states with similar laws
- 13820.10. "State"
- 13820.11. Construction to effect uniformity
- 13820.12. Short title
- 13820.13. Application of article to estates of decedents

§13820. Dispute as to Decedent's Domicile; Agreement to Arbitrate; Board of Arbitrators

When the Controller claims that a decedent was domiciled in this state at the time of his or her death and the taxing authorities of another state or states make a like claim on behalf of their state or states, the Controller may make a written agreement with the other taxing authorities and with the executor or administrator to submit the controversy to the decision of a board consisting of one or any uneven number of arbitrators (hereafter referred to in this article as "board"). The executor or administrator is hereby authorized to make the agreement. The parties to the agreement shall select the arbitrator or arbitrators.

§13820.1. Hearings

The board shall hold hearings at such times and places as it may determine, upon reasonable notice to the parties to the agreement, all of whom shall be entitled to be heard, to present evidence and to examine and cross-examine witnesses.

§13820.2. Powers of Board; Enforcement of Subpoenas

The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of books, papers and documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, any judge of a court of record of this state, upon application by the board, may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt.

§13820.3. Determination; Finality

The board shall, by majority vote, determine the domicile of the decedent at the time of his or her death. This determination shall be final for purposes of imposing and collecting death taxes but for no other purpose.

§13820.4. Majority Vote

Except as provided in Section 13820.2 in respect of the issuance of subpoenas, all questions arising in the course of the proceeding shall be determined by majority vote of the board.

§13820.5. Determination; Filing

The Controller, the board, or the executor or administrator shall file the determination of the board as to domicile, the record of the board's proceedings, and the agreement, or a duplicate, made pursuant to Section 13820, with the authority having jurisdiction to determine the death taxes in the state determined to be the domicile and shall file copies of all such documents with the authorities that would have been empowered to determine the death taxes in each of the other states involved.

§13820.6. Interest; Maximum Rate

In any case where it is determined by the board that the decedent died domiciled in this state, interest, if otherwise imposed by law, for nonpayment of death taxes between the date of the agreement and of filing of the determination of the board as to domicile, shall not exceed 10 percent per annum.

§13820.7. Written Compromise

Nothing contained herein shall prevent at any time a written compromise, if otherwise lawful, by all parties to the agreement made pursuant to Section 13820, fixing the amounts to be accepted by this and any other state involved in full satisfaction of death taxes.

§13820.8. Compensation and Expenses; Determination; Administration Expense

The compensation and expenses of the members of the board and its employees may be agreed upon among those members and the executor or administrator and if they cannot agree shall be fixed by the superior court of the state determined by the board to be the domicile of the decedent. The amounts so agreed upon or fixed shall be deemed an administration expense and shall be payable by the executor or administrator.

§13820.9. Applicability of Article; States with Similar Laws

This article shall apply only to cases in which each of the states involved has a law identical with or substantially similar to this act.

§13820.10. "State"

As used in this article, the word "state" means any state, territory, or possession of the United States, and the District of Columbia.

§13820.11. Construction to Effect Uniformity

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§13820.12. Short Title

This article may be cited as the "Uniform Act on Interstate Arbitration of Death Taxes."

§13820.13. Application of Article to Estates of Decedents

This article shall apply to estates of decedents dying before or after its enactment.

Article 8

Determination of Domicile by Arbitration: Alternative Method

Section

- 13830. Definitions
- 13830.1 Authorization; notice of election; effect of rejection
- 13830.2. Agreement accepting sum in full payment
- 13830.3. Failure to agree or lapse of time; effect
- 13830.4. Appointment of arbitration board members; chairman
- 13830.5. Hearings; notice
- 13830.6. Powers of arbitration board; subpoenas; punishment for failure to obey
- 13830.7. Rules of evidence
- 13830.8. Determination of domicile; effect; failure to render determination
- 13830.9. Compensation and expenses
- 13830.10. Filing determination and record
- 13830.11. Written agreement for sum in payment of tax; contents; assessment; coordination with federal estate tax credit
- 13830.12. Interest and penalties on unpaid taxes; limitation
- 13830.13. Application of article

§13830. Definitions

For the purposes of this article:

(a) "Executor" means an executor of the will or administrator of the estate of the decedent, but does not include an ancillary administrator nor an administrator with the will annexed if an executor named in the will has been appointed and has qualified in another state.

(b) "Taxing official" means the Controller of the State of California and the designated authority of a reciprocal state.

(c) "Death tax" means any tax levied by a state on account of the transfer or shifting of economic benefits in property at death, or in contemplation thereof, or intended to take effect in possession or enjoyment at or after death, whether denominated an "inheritance tax," "transfer tax," "succession tax," "estate tax," "death duty," "death dues," or otherwise.

(d) "Interested person" means any person who may be entitled to receive, or who has received, any property or interest which may be required to be considered in computing the death tax of any state involved.

(e) "State" means any state, territory, or possession of the United States, or the District of Columbia. "This state" means the State of California.

(f) "Board" means board of arbitration.

§13830.1. Authorization; Notice of Election; Effect of Rejection

In any case in which this state and one or more other states each claims that it was the domicile of a decedent at his or her death, at any time prior to the commencement of legal action for determination of domicile within this state or within 60 days thereafter, any executor, or the taxing official of any such state, may elect to invoke the provisions of this article. That executor or taxing official shall send a notice of that election by registered mail, receipt requested, to the taxing official of each such state and to each executor, ancillary administrator, and interested person. Within 40 days after the receipt of that notice of election, any executor may reject that election by sending a notice, by registered mail, receipt requested,

to all persons originally required to be sent a notice of election. When an election has been rejected by an executor, no further proceedings shall be had under this article. If that election is not rejected within the 40-day period, the dispute as to death taxes shall be determined solely as provided in this article. No other proceedings to determine or assess those death taxes shall thereafter be prosecuted in any court of this state or otherwise.

§13830.2. Agreement Accepting Sum in Full Payment

In any case in which an election is made and not rejected, the Controller may enter into a written agreement with the other taxing officials involved and with the executors to accept a certain sum in full payment of any death taxes, together with interest and penalties, that may be due this state; provided, this agreement fixes the amount to be paid the other states involved in the dispute.

§13830.3. Failure to Agree or Lapse of Time; Effect

If in any case it appears that an agreement cannot be reached, as provided in Section 13830.2, or if one year shall have elapsed from the date of the election without an agreement having been reached, the domicile of the decedent at the time of his or her death shall be determined solely for death tax purposes as provided for in this article.

§13830.4. Appointment of Arbitration Board Members; Chairman

Where only this state and one other state are involved, the Controller and the taxing official of the other state shall each appoint a member of a board of arbitration, and these members shall appoint the third member of the board. If this state and more than one other state are involved, the taxing officials thereof shall agree upon the authorities charged with the duty of administering death tax laws in three states not involved in the dispute and each of these authorities shall appoint a member of the board of arbitration. The board shall select one of its members as chairman.

§13830.5. Hearings; Notice

The board shall hold hearings at such places as are deemed necessary, upon reasonable notice to the executors, ancillary administrators, all other interested persons, and to the taxing officials of the states involved, all of whom are entitled to be heard.

§13830.6. Powers of Arbitration Board; Subpoenas; Punishment for Failure to Obey

The board may administer oaths, take testimony, subpoena witnesses and require their attendance, require the production of books, papers and documents, and issue commissions to take testimony. Subpoenas may be issued by any member of the board. Failure to obey a subpoena may be punished by any court of record in the same manner as if the subpoena had been issued by that court.

§13830.7. Rules of Evidence

Whenever practicable the board shall apply the rules of evidence then prevailing in the federal courts under the federal rules of civil procedure.

§13830.8. Determination of Domicile; Effect; Failure to Render Determination

The board shall determine the domicile of the decedent at the time of his or her death. This determination is final and conclusive and binds this state, and all of its judicial and administrative officials on all questions concerning the domicile of the decedent for death tax purposes. If the board does not render a determination within one year from the time it is fully constituted, all authority of the board shall cease and the bar to court proceeding set forth in Section 13830.1 shall no longer exist.

§13830.9. Compensation and Expenses

The reasonable compensation and expenses of the members of the board and its employees shall be agreed upon among those members, the taxing officials involved, and the executors. If an agreement cannot be reached, compensation and expenses shall be determined by those taxing officials; and, if they cannot agree, by the appropriate probate court of the state determined to be the domicile. The amount shall be borne by the estate and shall be deemed an administration expense.

§13830.10. Filing Determination and Record

The determination of the board and the record of its proceedings shall be filed with the authority having jurisdiction to assess the death tax in the state determined to be the domicile of the decedent and with the authorities which would have had jurisdiction to assess the death tax in each of the other states involved if the decedent had been found to be domiciled therein.

§13830.11. Written Agreement for Sum in Payment of Tax; Contents; Assessment; Coordination with Federal Estate Tax Credit

Notwithstanding the commencement of a legal action for determination of domicile within this state or the commencement of an arbitration proceeding, as provided in Section 13830.3, the Controller may in any case enter into a written agreement with the other taxing officials involved and with the executors to accept a certain sum in full payment of any death tax, together with interest and penalties, that may be due this state; provided, this agreement fixes the amount to be paid the other states involved in the dispute, at any time before that proceeding is concluded. Upon the filing of this agreement with the authority which would have jurisdiction to assess the death tax of this state, if the decedent died domiciled in this state, an assessment shall be made as provided in that agreement, and this assessment finally and conclusively fixes the amount of death tax due this state. If the aggregate amount payable under that agreement or under an agreement made in accordance with the provisions of Section 13830.2 to the states involved is less than the minimum credit allowable to the estate against the United States estate tax imposed with respect thereto, the executor forthwith shall also pay to this state the same percentage of the difference between that aggregate amount and the amount of that credit as the amount payable to this state under that agreement bears to that aggregate amount.

§13830.12. Interest and Penalties on Unpaid Taxes; Limitation

When in any case the board of arbitration determines that a decedent dies domiciled in this state, the total amount of interest and penalties for nonpayment of the tax, between the date of the election and the final determination of the board, shall not exceed 12 percent of the amount of the taxes per annum.

§13830.13. Application of Article

This article shall be applicable only to cases in which each of the states involved in the dispute has in effect therein a law substantially similar hereto. However, nothing contained in this section shall prohibit the application of this article or any part hereof where any of the other states involved in the dispute have in effect therein a law empowering the tax authority to voluntarily enter into a binding arbitration or compromise agreement and such an agreement is so entered into.

CHAPTER 8

Court Jurisdiction and Procedure Generally

Article

1. Court Jurisdiction. §§14000-14002
2. Court Procedure Generally. §§14010-14013

Chapter 8 was added by Stats. 1982, c. 327, p. 1501, §176, eff. June 30, 1982; Stats. 1982, c. 1535, p. 5986, §15.

Article 1

Court Jurisdiction

Section

- | | |
|--------|--|
| 14000. | Jurisdiction generally |
| 14001. | Jurisdiction; no estate subject to probate |
| 14002. | Jurisdiction; nonresident decedent |

§14000. Jurisdiction Generally

The superior court which has jurisdiction in probate of the estate of any decedent shall hear and determine all questions relative to any tax imposed by this part, whether the property listed in the estate tax return, or any portion thereof, is in the estate or not.

§14001. Jurisdiction; No Estate Subject to Probate

In a case where a deceased resident of this state leaves no estate subject to probate administration, the superior court in which the decedent resided at the date of death shall hear and determine all questions relative to any tax imposed by this part.

§14002. Jurisdiction; Nonresident Decedent

In the case of a decedent who was not a resident of this state at the time of his or her death, the superior court of the county in which the decedent's real property is situated, or, if he or she had no real property in this state, the superior court of the county in which any of his or her personal property is situated, has jurisdiction to hear and determine all questions relative to any tax imposed by this part. If the decedent leaves property in more than one county, the superior court of any such county whose jurisdiction is first invoked has exclusive jurisdiction.

Article 2

Court Procedure Generally

Section

- | | |
|--------|--|
| 14010. | Law governing procedure |
| 14011. | Relief inconsistent with law governing procedure not precluded |
| 14012. | Applicability of limitations provisions |
| 14013. | Charging fees to Controller prohibited |

§14010. Law Governing Procedure

Except as otherwise provided in this part, the provisions of the Code of Civil Procedure relative to judgments, new trials, appeals, attachments, and execution of judgments, so far as applicable, govern all proceedings under this part.

§14011. Relief Inconsistent with Law Governing Procedure Not Precluded

Nothing in this article precludes the state from any relief provided for in this part which may be inconsistent with the provisions of the Code of Civil Procedure.

§14012. Applicability of Limitations Provisions

The provisions of the Code of Civil Procedure relative to the time of commencing civil actions do not apply to any action or proceeding under this part to levy, appraise, assess, determine, or enforce the collection of any tax, interest, or penalty imposed by this part.

§14013. Charging Fees to Controller Prohibited

No fee shall be charged the Controller for filing, recording, or certifying any petition, lis pendens, decree, or order for taking any oath or acknowledgment, in any proceedings under this part; nor shall any undertaking be required from the Controller or the state in any such proceeding.

Chapter 9 Administration

Article

1. Generally. §§14101-14104
2. Special Employment. §14151
3. Hearings. §§14201-14206
4. Information Confidential. §§14251-14252

Chapter 9 was added by Stats. 1982, c. 327, p. 1502, §177, eff. June 30, 1982; Stats. 1982, c. 1535, p. 5987, §15.

Article 1 Generally

Section

14101. Administration by Controller
14102. Employment of assistants
14103. Rules and regulations
14104. Distribution of copies of part

§14101. Administration by Controller

This part shall be administered by the Controller.

§14102. Employment of Assistants

The Controller may employ those assistants, including attorneys, as may from time to time be necessary for the proper administration of this part.

§14103. Rules and Regulations

The Controller may make and enforce rules and regulations relating to the administration and enforcement of this part, and may prescribe the extent, if any, to which any ruling or regulation shall be applied without retroactive effect.

§14104. Distribution of Copies of Part

The Controller shall, without charge, distribute a copy of this part to any person who requests it.

Article 2 Special Employment

Section

14151. Attorney or representative

§14151. Attorney or Representative

Whenever he or she is cited as a party to any proceeding or action to determine any tax imposed by this part, or whenever he or she deems it necessary for the better enforcement of this part to secure evidence of the evasion of, or to commence or appear in any proceeding or action to determine, any such tax, the Controller may, with the consent and approval of the Attorney General:

- (a) Specially employ any attorney or other person in or out of the state to act for or represent him or her on the state's behalf.
- (b) Incur any reasonable and necessary expense for and incident to the employment.

Article 3 Hearings

Section

- 14201. Time or place; purpose
- 14202. Jurisdiction and powers of Controller
- 14203. Subpoenas; purposes
- 14204. Enforcement of subpoenas
- 14205. Examination and taking testimony
- 14206. Fees and expenses of persons attending hearings

§14201. Time or Place; Purpose

The Controller may conduct a hearing at any time or place for the purpose of determining whether a tax is due under this part.

§14202. Jurisdiction and Powers of Controller

For purposes of the hearing referred to in Section 14201, the Controller has all of the following:

- (a) Jurisdiction to require the attendance before him or her of any person who he or she may have reason to believe possesses knowledge of any facts that will aid the Controller in the determination of the tax.
- (b) All the powers of a referee of the superior court.

§14203. Subpoenas; Purposes

The Controller may issue subpoenas for any of the following purposes:

- (a) Compelling the attendance of any person before him or her or the production of books and papers.
- (b) Determining the amount of any tax due.

§14204. Enforcement of Subpoenas

On the filing by the Controller of a petition asking the court to do so, the superior court of the county in which a hearing is held may compel compliance with any subpoena issued by the Controller.

§14205. Examination and Taking Testimony

The Controller may examine and take the testimony under oath of any person appearing before him or her concerning the determination of any tax due under this part.

§14206. Fees and Expenses of Persons Attending Hearings

Any person compelled to attend a hearing before the Controller is entitled to fees for attendance in an amount to be determined by the Controller, and to his or her expenses of attendance. The fees and expenses are a part of the cost of administering this part.

Article 4

Information Confidential

Section

14251. Confidential information and records; disclosure; offense; punishment
14252. Examination of records by government officials

§14251. Confidential Information and Records; Disclosure; Offense; Punishment

All information and records acquired by the Controller or any of his or her employees are confidential in nature, and except insofar as may be necessary for the enforcement of this part or as may be permitted by this article, shall not be disclosed by any of them.

Except insofar as may be necessary for the enforcement of this part or as may be permitted by this article, any former or incumbent Controller or employee of the Controller who discloses any information acquired by any inspection or examination made pursuant to this article is guilty of a felony, and upon conviction shall be imprisoned in the state prison.

§14252. Examination of Records by Government Officials

The Controller may allow any local, state, or federal official charged with the administration of any tax law to examine his or her estate tax records under those rules and regulations as he or she may prescribe.

Chapter 10

Disposition of Proceeds

Section

14301. Estate tax fund; deposits

14302. Appropriation; estate tax fund money

Chapter 10 was added by Stats. 1982, c.327, p. 1504, §178, eff. June 30, 1982; Stats. 1982, c. 1538, p. 5988, §15.

§14301. Estate Tax Fund; Deposits

All taxes and other money collected under this part and received by the Treasurer shall be deposited in the State Treasury to the credit of the Estate Tax Fund, which fund is hereby created.

§14302. Appropriation; Estate Tax Fund Money

The money in the Estate Tax Fund is hereby appropriated as follows:

- (a) To pay the refunds authorized by this part and by Part 9.5 (commencing with Section 16700).
- (b) The balance of the money in the fund shall, on order of the Controller, be transferred to the unappropriated surplus in the State General Fund.

PART 9.5

GENERATION SKIPPING TRANSFER TAX

Chapter

1. Definitions. §§16700-16704
2. Imposition of the Tax. §§16710-16734
3. Payment of Tax. §§16750-16761
4. Collection of Tax. §§16800-16830
5. Refunds. §§16850-16871
6. Court Jurisdiction and Procedure Generally. §§16880-16890
7. Administration. §§16900-16911
8. Disposition of Proceeds. §16950

Part 9.5 was added by Stats. 1977, c. 1079, p. 3293, §12, eff. Sept. 26, 1977.

Chapter 1

Definitions

Section

16700. Short title
16701. Definitions governing construction
16702. "Generation-skipping transfer" defined
16703. "Original transferor" defined
16704. "Federal generation-skipping transfer tax" defined

Chapter 1 was added by Stats. 1977, c. 1079, p. 3293, §12, eff. Sept. 26, 1977.

§16700. Short Title

This part is known as the "Generation Skipping Transfer Tax Law."

§16701. Definitions Governing Construction

Except where the context otherwise requires, the definitions given in this chapter govern the construction of this part.

§16702. "Generation-Skipping Transfer" Defined

"Generation-skipping transfer" includes every transfer subject to the tax imposed under Chapter 13 of Subtitle B of the Internal Revenue Code of 1986, as amended, where the original transferor is a resident of the State of California at the date of original transfer, or the property transferred is real or personal property in California.

Added by Stats. 1977, c. 1079, p. 3293, §12, eff. Sept. 26, 1977. Amended by Stats. 1987, c. 1138, §2, eff. Sept. 25, 1987.

§16703. "Original Transferor" Defined

"Original transferor" means any grantor, donor, trustor or testator who by grant, gift, trust or will makes a transfer of real or personal property that results in a federal generation skipping transfer tax under applicable provisions of the Internal Revenue Code.

Added by Stats. 1977, c. 1079, p. 3293, §12, eff. Sept. 26, 1977.

§16704. "Federal Generation-Skipping Transfer Tax" Defined

"Federal generation-skipping transfer tax" means the tax imposed by Chapter 13 of Subtitle B of the Internal Revenue Code of 1986, as amended.

Added by Stats. 1977, c. 1079, p. 3294, §12, eff. Sept. 26, 1977. Amended by Stats. 1987, c. 1138, §3, eff. Sept. 25, 1987.

Chapter 2 Imposition of the Tax

Article

1. Tax Imposed. §16710
2. Returns. §§16720-16722
3. Deficiency Determination. §§16730-16734

Chapter 2 was added by Stats. 1977, c. 1079, p. 3294, §12, eff. Sept. 26, 1977.

Article 1 Tax Imposed

Section

16710. Imposition; amount; property in another state

§16710. Imposition; Amount; Property in Another State

(a) A tax is hereby imposed upon every generation-skipping transfer in an amount equal to the amount allowable as a credit for state generation-skipping transfer taxes under Section 2604 of the Internal Revenue Code.

(b) If any of the property transferred is real property in another state or personal property having a business situs in another state which requires the payment of a tax for which credit is received against the federal generation-skipping transfer tax, any tax due pursuant to subdivision (a) of this section shall be reduced by an amount which bears the same ratio to the total state tax credit allowable for federal generation-skipping transfer tax purposes as the value of such property taxable in such other state bears to the value of the gross generation-skipping transfer for federal generation-skipping transfer tax purposes.
Added by Stats. 1977, c. 1079, p. 3294, §12, eff. Sept. 26, 1977. Amended by Stats. 1987, c. 1138, §4, eff. Sept. 25, 1987.

Article 2 Returns

Section

16720. Time for filing; filing copy of federal return

16721. Contents of return

16722. Amended return; filing; increase or decrease

Article 2 was added by Stats. 1977, c. 1079, p. 3294, §12, eff. Sept. 26, 1977.

§16720. Time for Filing; Filing Copy of Federal Return

Every person required to file a return reporting a generation skipping transfer under applicable federal statute and regulations shall file a return with the State Controller on or before the last day prescribed for filing the federal return.

There shall be attached to the return filed with the Controller a duplicate copy of the federal return.

§16721. Contents of Return

The return shall contain such information and be in such form as the Controller may prescribe and shall state the amount of tax due under the provisions of this part.

The return shall contain, or be verified by, a written declaration that it is made under the penalties of perjury.

§16722. Amended Return; Filing; Increase or Decrease

If, after the filing of a duplicate return, the federal authorities shall increase or decrease the amount of the federal generation skipping transfer tax, an amended return shall be filed with the State Controller showing all changes made in the original return and the amount of increase or decrease in the federal generation skipping transfer tax.

Article 3 Deficiency Determination

Section

- 16730. Cases not involving false or fraudulent return; determination; limitation of actions; filing
- 16731. False or fraudulent return; determination by Controller at any time
- 16732. Setting aside or correcting an erroneous determination
- 16733. Notice of deficiency and penalty; copies
- 16734. Claim of erroneous deficiency; action; time for bringing

§16730. Cases Not Involving False or Fraudulent Return; Determination; Limitation of Actions; Filing

In a case not involving a false or fraudulent return or failure to file a return, if the Controller determines at any time after the tax is due, but not later than four years after the return is filed, that the tax disclosed in any return required to be filed by this part is less than the tax disclosed by his examination, a deficiency shall be determined; provided that in a case where the federal generation skipping transfer tax has been increased upon audit of the federal return, the determination may be made at any time within one year after the federal generation skipping transfer tax becomes final.

For the purposes of this section, a return filed before the last day prescribed by law for filing such return shall be considered as filed on such last day.

§16731. False or Fraudulent Return; Determination by Controller at Any Time

In the case of a false or fraudulent return or failure to file a return, the Controller may determine the tax at any time.

§16732. Setting Aside or Correcting an Erroneous Determination

In any case in which a deficiency has been determined in an erroneous amount, the Controller may, within three years after the erroneous determination was made, set aside the determination or issue an amended determination in the correct amount.

§16733. Notice of Deficiency and Penalty; Copies

The Controller shall give notice of the deficiency determined, together with any penalty for failure to file a return or to show any transfer in the return filed, by personal service or by mail to the person filing the return at the address stated in the return, or, if no return is filed, to the person liable for the tax. Copies of the notice of deficiency may in like manner be given to such other persons as the Controller deems advisable.

§16734. Claim of Erroneous Deficiency; Action; Time for Bringing

In any case in which it is claimed that a deficiency has been determined in an erroneous amount, any person who is liable for the tax may, within three years after the determination was made, bring an action against the state in the superior court having jurisdiction to have the tax modified in whole or in part.

Chapter 3 Payment of Tax

Article

1. Generally. §§16750-16753

2. Interest and Penalties. §§16760-16761

Chapter 3 was added by Stats. 1977, c. 1079, p. 3295, §12, eff. Sept. 26, 1977.

Article 1 Generally

Section

16750. Person liable

16751. Tax due upon taxable distribution or taxable termination as determined by federal law

16752. Time of delinquency

16753. Payment to State Controller; payee

§16750. Person Liable

The person liable for payment of the federal generation skipping transfer tax shall be liable for the tax imposed by this part.

§16751. Tax Due upon Taxable Distribution or Taxable Termination as Determined by Federal Law

The tax imposed by this part is due upon a taxable distribution or a taxable termination as determined under applicable provisions of the federal generation skipping transfer tax.

§16752. Time of Delinquency

The tax becomes delinquent from and after the last day allowed for filing a return for the generation skipping transfer.

§16753. Payment to State Controller; Payee

The tax shall be paid to the State Controller by remittance payable to the State Treasurer.

Article 2 Interest and Penalties

Section

16760. Interest on delinquency; rate

16761. Applicability of payments

§16760. Interest on Delinquency; Rate

If the tax is not paid before it becomes delinquent, it bears interest thereafter and until it is paid at the same rate per annum as provided in Section 6621(a)(2) of the Internal Revenue Code, compounded daily. *Amended by Stats. 2000, c. 363, p. 3, §8, eff. January 1, 2001.*

§16761. Applicability of Payments

Every payment on the tax imposed by this part is applied, first, to any interest due on the tax, and then, if there is any balance, to the tax itself.

Chapter 4 Collection of Tax

Article

1. Suit for Tax. §16800
2. Lien of Tax. §16810
3. Writ of Execution. §16820-16821
4. Miscellaneous. §16830

Chapter 4 was added by Stats. 1977, c. 1079, p. 3296, §12, eff. Sept. 26, 1977.

Article 1 Suit for Tax

Section

16800. Enforcement of tax lien by civil action

§16800. Enforcement of Tax Lien by Civil Action

The state may enforce its claim for any tax imposed by this part and enforce the lien of the tax by a civil action in any court of competent jurisdiction against any person liable for the tax or against any property subject to the lien.

Article 2 Lien of Tax

Section

16810. Duration

§16810. Duration

The tax imposed by this part is a lien in the manner prescribed in Section 13610 upon the property transferred from the time the generation skipping transfer is made and until the expiration of 10 years from and after the time a deficiency determination is issued pursuant to the provisions of this part or until the tax is paid, whichever is earlier.

Added by Stats. 1977, c. 1079, p. 3296, §12, eff. Sept. 26, 1977. Amended by Stats. 1987, c. 894, §2.

Article 3 Writ of Execution

Section

16820. Issuance to Controller to enforce judgment

16821. Manner of execution

Article 3 was added by Stats. 1977, c. 1079, p. 3296, §12, eff. Sept. 26, 1977.

§16820. Issuance to Controller to Enforce Judgment

At any time after a tax imposed by this part is delinquent, the Controller may have a writ of execution issued for the enforcement of any judgment rendered pursuant to this part in respect to the tax.

§16821. Manner of Execution

The writ shall be executed against any property of any person liable for the tax, or against any property subject to the lien of the tax.

Article 4
Miscellaneous

Section

16830. Proceedings for collection of tax; time for commencement

§16830. Proceedings for Collection of Tax; Time for Commencement

Proceedings for the collection of any tax imposed by this part may be commenced at any time after the tax is due and within 10 years from and after the time a deficiency determination is issued pursuant to the provisions of this part.

Chapter 5 Refunds

Article

1. When Allowable. §§16850-16852
2. Suit for Refund. §§16860-16862
3. Interest on Refunds. §§16870-16871

Chapter 5 was added by Stats. 1977, c. 1079, p. 3297, §12, eff. Sept. 26, 1977.

Article 1 When Allowable

Section

16850. Finding of overpayment by Controller; refund
16851. Time for refund; claim; allowance or denial
16852. Persons entitled to refund

§16850. Finding of Overpayment by Controller; Refund

If the Controller finds that there has been an overpayment of tax by a taxpayer for any reason, the amount of the overpayment shall be refunded to the taxpayer.

§16851. Time for Refund; Claim; Allowance or Denial

No refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period a claim therefor is filed by the taxpayer, or unless before the expiration of such period the Controller makes a refund. A claim for refund may be filed in such form as the Controller may prescribe, and the Controller shall allow or deny the claim, in whole or in part, and mail a notice of such determination to the claimant at the address stated on the claim.

§16852. Persons Entitled to Refund

Any person who has paid any tax imposed by this part which later is determined by judgment to have been in excess of the amount legally due, or an heir, the executor of the will, or the administrator of the estate of any such person, but not his assignee, is entitled to a refund in the amount of the excess paid within one year after the judgment becomes final.

Article 2 Suit for Refund

Section

16860. Time for action; persons entitled to bring action
16861. Process; service
16862. Hearing; judgment

§16860. Time for Action; Persons Entitled to Bring Action

Within four years from the last date prescribed for filing the return or within one year from the date the tax was paid, or within 90 days after a determination under Section 16851 is issued, whichever is

later, any person who has paid the tax may bring an action against the state in the superior court having jurisdiction to have the tax refunded, in whole or in part.

§16861. Process; Service

Process in the action directed to the state shall be served on the Controller.

§16862. Hearing; Judgment

After a hearing in which the Controller shall represent the state, the court shall review the Controller's appraisal and determination of tax, and, as the case may require, shall by judgment modify or confirm the appraisal or determination in whole or in part.

Article 3
Interest on Refunds

Section

16870. Allowance and payment; grounds; rate

16871. Judgments modifying amounts previously determined to be due

§16870. Allowance and Payment; Grounds; Rate

Interest shall be allowed and paid upon any overpayment of tax due under this part in the same manner as provided in Sections 6621(a)(1) and 6622 of the Internal Revenue Code.

Amended by Stats. 2000, c. 363, p. 3, §9, eff. January 1, 2001.

§16871. Judgments Modifying Amounts Previously Determined to Be Due

Section 16871 of the Revenue and Taxation Code was repealed by Stats. 2000, c.363, p. 3, §10, eff. January 1, 2001.

Chapter 6

Court Jurisdiction and Procedure Generally

Article

1. Court Jurisdiction. §§16880-16881
2. Court Procedure Generally. §16890

Chapter 6 was added by Stats. 1977, c. 1079, p. 3298, §12, eff. Sept. 26, 1977.

Article 1

Court Jurisdiction

Section

16880. Transferor resident of state
16881. Transferor not a resident of state

§16880. Transferor Resident of State

The superior court of the county in which a transferor resident of this state resided at the date of any generation skipping transfer made by him has jurisdiction to hear and determine all questions relative to any tax imposed by this part on the gift.

§16881. Transferor Not a Resident of State

In the case of a transferor who was not a resident of this state at the date of any generation skipping transfer made by him, the superior court of the county in which any of the transferor's real property is situated, or, if he has no real property in this state, the superior court of the county in which any of his personal property is situated, has jurisdiction to hear and determine all questions relative to any tax imposed by this part. If the transferor has property in more than one county, the superior court of any such county whose jurisdiction is first invoked has exclusive jurisdiction.

Article 2

Court Procedure Generally

Section

16890. Applicability of code of civil procedure

§16890. Applicability of Code of Civil Procedure

Except as otherwise provided in this part, the provisions of the Code of Civil Procedure relative to judgments, new trials, appeals, attachments and execution of judgments, so far as applicable, govern all proceedings under this part.

Chapter 7 Administration

Article

1. Generally. §§16900-16905
2. Inspection of Records. §§16910-16911

Chapter 7 was added by Stats. 1977, c. 1079, p. 3298, §12, eff. Sept. 26, 1977.

Article 1 Generally

Section

- 16900. Administration by Controller
- 16901. Employment of assistants
- 16902. Rules and regulations
- 16903. Cooperation of Franchise Tax Board
- 16904. Cooperation of State Board of Equalization
- 16905. Appearance by Controller

§16900. Administration by Controller

This part is administered by the Controller.

Added by Stats. 1977, c. 1079, p. 3298, §12, eff. Sept. 26, 1977. Amended by Stats. 1983, c. 407, §5.

§16901. Employment of Assistants

The Controller may employ such assistants, including attorneys, as may from time to time be necessary for the proper administration of this part.

Added by Stats. 1977, c. 1079, p. 3298, §12, eff. Sept. 26, 1977.

§16902. Rules and Regulations

The Controller may make and enforce rules and regulations relating to the administration and enforcement of this part, and may prescribe the extent, if any, to which any ruling or regulation shall be applied without retroactive effect.

§16903. Cooperation of Franchise Tax Board

Under rules and regulations upon which the Controller and Franchise Tax Board may agree, the Franchise Tax Board shall cooperate in the enforcement of this part by reporting to the Controller any changes in the gross or net income of any person, or any other information obtained in the enforcement of any act administered by the Franchise Tax Board which may in any way indicate that a transfer has been made which is taxable under this part.

§16904. Cooperation of State Board of Equalization

Under rules and regulations upon which the Controller and State Board of Equalization may agree, the State Board of Equalization shall cooperate in the enforcement of this part by reporting to the Controller any information obtained in the enforcement of any act administered by the State Board of Equalization which may in any way indicate that a transfer has been made which is taxable under this part.

§16905. Appearance by Controller

The Controller on his own motion may appear in behalf of the state in any and all generation skipping transfer tax matters before any court.

Article 2 Inspection of Records

Section

16910. Confidential nature of information and records; punishment for disclosure

16911. Inspection of Controller's records by local, state, or federal officials

§16910. Confidential Nature of Information and Records; Punishment for Disclosure

All information and records acquired by the Controller or any of his employees are confidential in nature, and, except insofar as may be necessary for the enforcement of this part or as may be permitted by this article, shall not be disclosed by any of them.

Except insofar as may be necessary for the enforcement of this part or as may be permitted by this article, any former or incumbent Controller or employee of the Controller who discloses any information acquired by any inspection or examination made pursuant to this article is guilty of a felony, and upon conviction shall be imprisoned in the state prison.

§16911. Inspection of Controller's Records by Local, State, or Federal Officials

The Controller may allow any local, state, or federal official charged with the administration of any tax law to examine his generation skipping transfer tax records under such rules and regulations as he may prescribe.

Chapter 8 Disposition of Proceeds

Chapter 8 was added by Stats. 1977, c. 1079, p. 3299, §12, eff. Sept. 26, 1977.

Section

16950. Payment of moneys to Controller; deposit of funds

§16950. Payment of Moneys to Controller; Deposit of Funds

All money due under this part shall be paid to the Controller by remittance payable to the State Treasurer. The amounts received shall be deposited, after clearance of remittance, in the State Treasury to the credit of the Estate Tax Fund.

Added by Stats. 1977, c. 1079, p. 3299, §12, eff. Sept. 26, 1977. Amended by Stats. 1983, c. 407, §6.

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SUBCHAPTER 6.5

RULES AND REGULATIONS RELATING TO CALIFORNIA ESTATE TAX

Article 1

Imposition of Tax

Section

- 1138.10. Effective date
- 1138.12. Tax imposed - generally
- 1138.14. State death tax liability
- 1138.16. Other states
- 1138.18. State death tax proration

§1138.10. Effective Date

(a) The estate tax (Part 8 of the Revenue and Taxation Code) took effect as of June 8, 1982, and applies to the estates of decedents dying on or after said date.

(b) Any liability for inheritance or gift tax incurred prior to such date shall be determined and enforced under the applicable law in effect on the date of death or date of completed transfer as fully and to the same extent as if the repeals of Parts 8 and 9 of Division 2 of the Revenue and Taxation Code had not been made.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Sections 13301, 13302, Revenue and Taxation Code; Section 4 of Initiative Measure, Proposition 6 of June 8, 1982.

§1138.12. Tax Imposed - Generally

(a) In general, property subject to the California Estate Tax includes any real or personal property, and any rights or interest therein or income therefrom, the receipt of or succession to which may be taxed under the California Estate Tax and under the Constitutions of this State and the United States.

(b) The California Estate Tax is due in every case in which the credit is available, whether or not it is claimed for federal estate tax purposes. It is not affected by a failure to take or preserve the federal credit.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13302, Revenue and Taxation Code.

§1138.14. State Death Tax Liability

(a) In no event shall the California Estate Tax result in a total death tax liability to the State of California and the United States in excess of the death tax liability to the United States which would result if Section 13302 of the Revenue and Taxation Code were not in effect. However, in no event shall the California Estate Tax be less than the credit for state death taxes (adjusted under Section 13304 if applicable) less the credits that would have been claimed on lines 17 through 19 on page 1 of the federal estate tax return if there had been no California Estate Tax.

(b) Two calculations of the estate tax are made: one computing the total state and federal estate tax due and one computing the federal estate tax assuming no California estate tax. The sum obtained in the first computation cannot exceed the amount determined in the second computation. If it does, the California Estate Tax is reduced by the excess. This may be stated by the following formula:

$$\text{CET} + \text{FET} \leq \text{FET assuming no CET}.$$

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13302, Revenue and Taxation Code.

§1138.16. Other States

"Another state" or "other states" means any state of the fifty states in the United States, other than this state, and includes the District of Columbia, and any possession or territory of the United States.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Sections 13304 & 13830, Revenue and Taxation Code.

§1138.18. State Death Tax Proration

If a decedent, having property with a situs in California, leaves property having a situs in a state other than California, the maximum state death tax credit shall be multiplied by the percentage which the gross value of property having a situs in California bears to the gross value of the entire estate subject to federal estate tax. The product of the calculation shall be the portion of the maximum state death tax credit which is attributable to property having a situs in California. The property having a situs in the other state, whether or not or to what extent the property is taxed in that state, will be ignored for purposes of the California tax.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13304, Revenue and Taxation Code.

Article 2 Definitions

Section

- 1138.20. Property in California
- 1138.22. Definition of property
- 1138.24. Personal representative
- 1138.25. Domicile
- 1138.28. Non-resident decedent - generally
- 1138.29. Evidence of intent

§1138.20. Property in California

Property located in California includes, but is not limited to:

- (1) All real and tangible personal property situated in this state;
- (2) All intangible personal property, wherever situated, of a resident decedent;
- (3) In general, intangibles of a deceased, nonresident of the United States, if evidence of ownership is in California or if the issuer (i.e., of stock certificates, promissory notes, or similar choses in action) has its principal place of business in California.
- (4) Land trust agreements which expressly provide that the interest of the beneficiary of the trust shall be deemed to be personal property with no right, title, or interest in or to any portion or specific part of the real estate, but only an interest in the earnings or proceeds, shall be deemed to be intangible personal property of the beneficiary.
- (5) Real property having a situs in this state is taxable although such property is held in a personal trust. Real property having an actual situs outside this state shall not be taxable with respect to a resident decedent when such property is held in a personal trust.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13402, Revenue and Taxation Code.

§1138.22. Definition of Property

(a) Real Property. Real property includes, but is not limited to, leasehold interests, mineral interests (including royalty interests in oil, gas, or similar leases or property interests), the vendee's interest in an executory contract for the purchase of real property, and real interests held in trust.

(b) Intangible Personal Property. The term "intangible personal property" includes but is not limited to, stocks, bonds, notes (whether secured or unsecured), bank deposits, accounts receivable, patents, trademarks, copyrights, good will, fungible goods, partnership interests, life insurance policies, the vendor's interest in an executory contract for the sale of real property, and other choses in action.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13402, Revenue and Taxation Code.

§1138.24. Personal Representative

(a) "Personal representative" generally means the executor or administrator appointed to administer the decedent's estate. However, when no such person has been appointed, or is no longer acting, then any such person in possession of the property of the estate can be considered a "personal representative" for estate tax purposes.

(b) "Possession" of property means actual or constructive possession and denotes physical dominion or control or the right thereto over the property, including but not limited to joint or co-owners, partners or joint ventures, trustees or other fiduciaries, and transferees or distributees of the estate.

(c) A "personal representative" also includes a guardian, conservator, trustee, or other person charged with the responsibility of paying the estate tax under the provisions of Sections 20100 through 20125 of the Probate Code.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13403, Revenue and Taxation Code; Section 20100, Probate Code; 26 USC Section 2203.

§1138.25. Domicile

(a) "Domicile" is the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain, and to which, whenever he is absent, he has the intention of returning, but which the law may also assign to him constructively. Domicile is acquired by: (1) birth, (2) operation of law, (3) choice.

(b) The domicile of the custodial parent is the domicile of an unmarried minor and cannot be changed by his or her own act.

(c) A married person may retain his or her legal residence in the State of California, notwithstanding a change in legal residence or domicile of his or her spouse.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13407, Revenue and Taxation Code; Section 244, Government Code.

§1138.28. Non-Resident Decedent - Generally

(a) When a claim is made that domicile was outside the State of California, the taxpayer has the burden of proof.

(b) A claim that a decedent was domiciled in another state shall be supported by a declaration under penalty of perjury under the laws of California or by affidavit.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13408, Revenue and Taxation Code.

§1138.29. Evidence of Intent

(a) Evidence of a person's intent as to domicile at the time of death shall include:

- (1) The state in which the decedent had, at the time of his death, his principal place of business or employment;
- (2) Oral declarations made by the decedent (greater weight is given to the decedent's actions than bare statements of intent);
- (3) Written declarations, whether contained in letters, deeds, wills or contracts and other instruments, made by the decedent;
- (4) Place of filing of federal and state income tax returns, and the address given on such returns;
- (5) Automobile registration and driver's license;
- (6) Registration as a voter;
- (7) The center of decedent's social activities, such as membership in local churches, lodges, clubs or societies;
- (8) The place where decedent's children attend schools;
- (9) Professional or vocational licenses obtained by the decedent from a particular state;
- (10) Ownership, purchase, or lease of real property;
- (11) Amount of time spent in state;
- (12) Place of death and burial.

(b) No single factor is controlling in determining domicile. Rather the factors are examined collectively to determine if the intent to acquire or abandon California domicile exists. A simple declaration of intent to abandon domicile, or physical presence elsewhere is insufficient to abrogate California domicile.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13408, Revenue and Taxation Code.

Article 3 Estate Tax Return

Section

- 1138.30. Return required
- 1138.32. Extension of time
- 1138.34. Amended return
- 1138.36. Notice of final determination
- 1138.38. Federal estate tax return

§1138.30. Return Required

(a) Within nine (9) months of the date of death, a return consisting of an original executed copy of the California Estate Tax Return (form ET-1, 2/96) and an executed copy of the federal estate tax return with accompanying schedules and dispositive documents shall be filed with the office of the State Controller, Sacramento, California, at the address indicated on the ET-1.

(b) The postmark date will determine the date of filing when returns are delivered to the State Controller by United States mail. If no postmark is present, a postage meter is used, or delivery is made to another entity, the date of receipt will determine the date of filing.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13501, Revenue and Taxation Code.

§1138.32. Extension of Time

An extension of time in which to file the return does not operate as an extension of time in which to make payment.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Sections 13502, 13532, Revenue and Taxation Code.

§1138.34. Amended Return

Each time an amended federal estate tax return is filed, an amended return shall be filed with the Controller. An amended return shall be filed even though it is anticipated that additional amended returns will be filed. The return shall consist of an original executed copy of an amended California Estate Tax Return and an executed copy of the amended federal estate tax return with accompanying schedules and relevant documents such as the report of examination changes.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13503, Revenue and Taxation Code.

§1138.36. Notice of Final Determination

(a) The written notice of the final determination of federal estate tax due shall include copies of any final determination report, any compromise agreement, the closing letter, any court decisions, and any other available evidence of the final determination.

(b) A final federal determination is an irrevocable determination of a taxpayer's liability from which there exists no further right of appeal, either administrative or judicial. Some examples of final determination dates are:

- (1) A closing agreement under Section 7121 of the Internal Revenue Code finally and irrevocably adjusting and settling a tax liability.
- (2) A decision by the United States Tax Court or a judgment, decree or other order by any court of competent jurisdiction which has become final.
- (3) A final disposition of a claim for refund.
- (4) An assessment pursuant to a waiver filed under Section 6213 (d) of the Internal Revenue Code or pursuant to a compromise.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13504, Revenue and Taxation Code.

§1138.38. Federal Estate Tax Return

A "federal estate tax return" includes, but is not limited to, any notice or filing required under federal law, any notice or filing which indicates a tax due, which indicates any change in a tax due, or which could affect the determination of tax due the federal government under Chapter 11 of the Internal Revenue Code.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Sections 13501-13504, Revenue and Taxation Code.

Article 3.5 Penalties

Section

1138.40. Reasonable cause - defined

1138.42. Burden of proof

§1138.40. Reasonable Cause - Defined

(a) If the required return is not filed on time the delinquency penalty is mandatory unless there is a showing of "reasonable cause" for the delay.

(b) "Reasonable cause" means the exercise of ordinary business care and prudence. The following specific causes for failure to file a return within the time prescribed by law, if clearly established by the taxpayer, will be accepted as reasonable.

(1) Where the return was mailed on time, properly addressed and with sufficient postage to reach the Controller's Office in the normal course of United States mail service within the legal period.

(2) Where the delay or failure to file was due to erroneous information given the taxpayer by an employee of the Controller.

(3) Where the delay or failure to file was caused by death or serious illness of the taxpayer or serious illness in the immediate family.

(4) Where the delay was caused by the unavoidable absence of the taxpayer.

(5) If a similar penalty for failure to timely file the federal estate tax return is waived, that waiver shall be deemed to constitute reasonable cause. On the other hand, if a similar federal penalty is assessed and not waived, it shall be presumed that reasonable cause does not exist. A "similar" penalty is one imposed when the return was filed late with California for essentially the same reasons and at the same time. For example, if a federal estate tax return was filed late in January 1994 and IRS granted a penalty waiver but no return was filed with California until November 1994, the federal waiver will not be recognized.

(c) Generally, the failure to timely file is not excused by reliance on an agent and such reliance is not reasonable cause for late filing.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13510, Revenue and Taxation Code; United States v. Boyle (1985) 469 US 241.

§1138.42. Burden of Proof

(a) The taxpayer has the burden of proving reasonable cause.

(b) The taxpayer shall set forth any claim of reasonable cause for a delinquent filing in an affidavit or declaration under penalty of perjury.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13510, Revenue and Taxation Code; United States v. Boyle (1985) 469 US 241.

Article 4

Deficiency Determination

Section

1138.50. Return - defined

§1138.50. Return - Defined

Generally, a "return" includes, but is not limited to all returns required by Section 13501 of the Revenue and Taxation Code, all amended returns required by Section 13503, and the notice required by Section 13504.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Sections 13501, 13503, 13504 & 13516, Revenue and Taxation Code.

Article 5

Payment of Tax

Section

1138.60. Liability of personal representative

1138.62. Extent of liability

1138.64. Tax liability extends indefinitely

1138.66. Extension of time

1138.68. Payment to Controller

§1138.60. Liability of Personal Representative

A personal representative is liable for all taxes, interest and penalties payable on the estate until the same have been paid.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13530, Revenue and Taxation Code.

§1138.62. Extent of Liability

(a) The personal representative is liable for the payment of the tax to the extent of assets subject to his or her control. There may be more than one personal representative. For example, the executor of an estate for payment of the tax rising from assets subject to his or her control may be the trustee of an inter vivos trust for payment of the tax rising from assets subject to his or her control.

(b) Nothing in this section shall be interpreted as reducing the responsibilities of a personal representative for payment of the California estate tax from that set forth in Sections 20100 to 20125 of the Probate Code.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13530, Revenue and Taxation Code.

§1138.64. Tax Liability Extends Indefinitely

Liability for payment of the tax continues until the tax is paid to the extent of assets which, at the time of decedent's death, or thereafter, became subject to the control of the personal representative. Distribution of the assets does not extinguish liability.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13530, Revenue and Taxation Code.

§1138.66. Extension of Time

An extension of time for filing a return does not operate to extend the time for payment of the tax.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13531, Revenue and Taxation Code.

§1138.68. Payment to Controller

Payment of the tax may be in legal tender of the United States, or by negotiable check, draft, or money order to the State Treasurer. The acceptance by the Controller of a check, draft, or money order in U.S. currency constitutes a payment of the tax for which it was given as of the date of the acceptance when, but not before, such instrument is actually paid. If the instrument for any reason is not actually paid, the Controller will proceed to collect the tax, and the taxpayer will remain liable therefor, together with all interest thereon, as though the payment had not been tendered.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13533, Revenue and Taxation Code.

Article 5.5 Interest

Section

1138.70. Interest on delinquent tax

1138.72. Rate of interest

1138.74. Partial payment

§1138.70. Interest on Delinquent Tax

There is no relief for accrued interest for a late payment of the Estate Tax.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13550, Revenue and Taxation Code.

§1138.72. Rate of Interest

If the tax due is not paid by the date on which it becomes delinquent, the amount due shall bear interest at the rate of 12% per annum, or at any other rate provided by statutory amendment.

(a) The annual rate of interest shall be applied to the amount due. The annual amount of interest shall be multiplied by the number of whole years for which interest has accrued. Whole years are determined by starting on the date upon which interest starts to accrue and ending on the day preceding the anniversary of the date upon which interest started to accrue.

(b) The annual interest shall be divided by 365 to reach a daily rate. The daily rate shall be multiplied by the number of days for which interest has accrued during a year which is not a whole year.

(c) If the applicable rate is changed in what otherwise would be a whole year, then that year is not considered a whole year and the determination of the next whole year shall start upon the date upon which the interest rate changed.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13550, Revenue and Taxation Code.

§1138.74. Partial Payment

(a) If partial payment is made prior to the delinquent date, and there is no penalty imposed, such payment shall be applied to principal due.

(b) If a penalty is imposed it continues until the filing date and is not stopped by payment on the tax.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13551, Revenue and Taxation Code.

Article 6 Refunds

Section

1138.80. Federal Reserve rate - defined

§1138.80. Federal Reserve Rate - Defined

The Federal Reserve rate is the federal discount rate set by the Federal Reserve Board.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13563, Revenue and Taxation Code.

Article 7 Lien of Tax

Section

1138.90. Lien enforcement

§1138.90. Lien Enforcement

The lien may be enforced against any person liable for the tax or any property subject to the tax, or both.

Note: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13610, Revenue and Taxation Code.

Article 8 Inspection of Records

Section

1139. Confidential information; disclosure

§1139. Confidential Information; Disclosure

(a) All information and records relative to any tax imposed by the California Estate Tax Law acquired by the State Controller or any of his or her employees are confidential in nature and, except as may be necessary for the enforcement of the estate tax law, cannot be divulged to any person other than a person liable for the tax or his or her duly authorized agent, or any local, state, or federal tax official.

(b) If the State Controller has received the information to be divulged from the United States Internal Revenue Service, the person to whom it is divulged shall be advised of its source and that the confidentiality afforded thereto must be the same as if it were received directly from the Internal Revenue Service.

(c) Except where otherwise prohibited by federal or state law or by agreement between the Internal Revenue Service and the State Controller, information received from the United States Internal Revenue Service may be divulged only

- (1) to representatives of the Internal Revenue Service;
- (2) to the State Board of Equalization and the Franchise Tax Board;
- (3) to a person liable for the tax or his or her duly authorized agent; and
- (4) in judicial proceedings for enforcement of the California Estate Tax Law.

Note: Authority cited: Sections 14103 and 14252, Revenue and Taxation Code. Reference: Sections 14251 and 14252, Revenue and Taxation Code.

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